

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FRANK ORTIZ,

Plaintiff,

v.

ISIDRO BACA, *et al.*,

Defendants.

3:07-cv-00531-RCJ-VPC

REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE

June 11, 2010

This Report and Recommendation is made to the Honorable Robert C. Jones, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. Before the court is plaintiff's motion for order invalidating settlement agreement and motion for sanctions (#47). Defendants opposed the motion (#49), and plaintiff replied (#51, #54). The court recommends that plaintiff's motion be denied and that the District Court enter an order to the Clerk of Court to close this case in full.

I. HISTORY & PROCEDURAL BACKGROUND

Plaintiff Frank Ortiz ("plaintiff"), acting in *pro se*, is currently a prisoner at Ely State Prison ("ESP") in the custody of the Nevada Department of Corrections ("NDOC"). Plaintiff originally brought his civil rights action against the defendants in state court, and defendants removed the case to federal court (#1). The court need not address the facts underlying the cause of action and does not address them here.

The parties ostensibly settled this case on November 18, 2008 (#24). Disagreements concerning the terms of the agreement resulted in the parties filing cross-motions to enforce the settlement agreement (#25, #26). On January 15, 2009, this court issued a Report and Recommendation in which it recommended that the District Court order defendants to perform under the terms of the settlement agreement. *See* #25, Ex. E (containing a full copy of the parties' settlement agreements). In relevant part, that settlement agreement provided that defendants pay

1 plaintiff thirty-nine dollars and sixty-eight cents (\$39.68) and provide copies of documents from a
2 separate lawsuit that plaintiff had filed in 2001. *Id.* pp. 48-49.¹

3 However, the settlement agreement, drafted by defendants, contained certain ambiguities.
4 Although the agreement clearly provided for one-hundred twenty-nine (129) pages of documents,
5 the next subsection of the agreement noted that the “documents” consisted of only twenty-four (24)
6 pages. *Id.*

7 On October 23, 2009, the District Court accepted and adopted this court’s Report and
8 Recommendation (#43). The District Court issued an order for defendants to perform all obligations
9 under the settlement agreement. *Id.* Defendants did not promptly perform their obligations under
10 the agreement. Plaintiff submits a letter that he sent to defendants on November 3, 2009 (#51, Ex.
11 1). In that letter, plaintiff noted the District Court’s order and requested that defendants furnish him
12 with the twenty-four (24) pages of court documents listed in the settlement agreement and deposit
13 the remainder of the money in his Trust 2 account.² Whether defendants received the letter is not
14 known. Nevertheless, defendants did not respond to plaintiff’s letter nor did they perform any of the
15 obligations in the settlement agreement.

16 On November 30, 2009, plaintiff filed the instant motion, presumably in an effort to get
17 defendants to act (#47). He noted (1) that defendants had not deposited funds into his account, and
18 (2) that defendants had not provided the copied documents. *Id.* Plaintiff sought to sanction
19 defendants for their violation of the court order, and he also sought to invalidate the settlement
20 agreement. *Id.*

21 After plaintiff filed the instant motion with the court, defendants began to perform. On
22 December 2, 2009, defendants tried to contact plaintiff to clarify how many documents plaintiff
23

24 ¹ The copied documents included one-hundred twenty-nine (129) pages from *Ortiz v.*
25 *Abrahamson*, No. 3:01-cv-0018-HDM-RAM. *See* #25, Ex. E, pp. 48-49. At eight cents per page, the total
26 value of the copy work amounts to ten dollars and thirty-two cents (\$10.32), bringing the “total value” of the
settlement to fifty dollars (\$50.00).

27 ² With this understanding, twenty-four pages at eight cents per page would amount to one
28 dollar and ninety-two cents (\$1.92). The plaintiff then requested that the remainder (\$48.08) be deposited
to his account.

1 wanted (#49, p. 2). However, plaintiff refused to discuss the matter further with defense counsel.
 2 *Id.*

3 On December 4, 2009, defendants deposited thirty-nine dollars and sixty-eight cents (\$39.68)
 4 into plaintiff's Trust 2 account (#52, Ex. A). One week later, they deposited eight dollars and forty
 5 cents (\$8.40) into plaintiff's Trust 2 account and delivered one hundred twenty-nine (129) pages of
 6 documents to plaintiff (#50, Ex. B).

7 Although plaintiff has not withdrawn his motion, plaintiff submitted an amended reply to
 8 defendants' opposition in which he does not expressly mention that defendants have performed their
 9 obligations, but he implicitly makes that point (#54). He narrows his request for sanctions against
 10 defendants, not for failure to comply with the court's order, but for "delay" in compliance with the
 11 court's order. *Id.*

12 II. DISCUSSION & ANALYSIS

13 "Settlement agreements are designed to, and usually do, end litigation, not create it." *In re*
 14 *City Equities Anaheim*, 22 F.3d 954, 957 (9th Cir. 1994). "This circuit also recognizes a trial court's
 15 inherent enforcement power." *Id.* (citing *Dacanay v. Mendoza*, 573 F.2d 1075, 1078 (9th Cir.1978)).
 16 Summary enforcement evolved because "high judicial favor" has been accorded to the voluntary
 17 settlement of disputes and the efficiency of having one court see litigation through to its conclusion
 18 avoids the duplication of effort. *See Autera v. Robinson*, 419 F.2d 1197, 1200 (D.C.Cir.1969), *cited*
 19 *with approval in In re City Equities Anaheim*, 22 F.3d 954 (9th Cir. 1994).

20 A. Invalidating a Settlement Agreement

21 "The construction and enforcement of settlement agreements are governed by principles of
 22 local law which apply to interpretation of contracts generally." *O'Neil v. Bunge*, 365 F.3d 820, 822
 23 (9th Cir. 2004) (quoting *Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th Cir. 1989)). A compromise or
 24 settlement agreement is treated like other contractual arrangement, and in Nevada, it may be
 25 invalidated on failure to establish the essential elements and is binding unless it was the result of
 26 fraud, mistake, or improper means. *See May v. Anderson*, 119 P.3d 1254, 1258, 121 Nev. 668, 673-
 27 74 (2005); *Stonecifer v. Yellow Jacket Silver Mining Co.*, 3 Nev. 38, 1867 WL 2014, at *5 (Nev.
 28 1867).

Here, the court clearly defined the relevant portions of the agreement in its previous Report and Recommendation, and it need not reiterate that ruling here. *See* #37. Plaintiff does not raise any issue as to the essential terms of the agreement, nor does he mention that the settlement was obtained by means of fraud, mistake or improper means. Plaintiff's only contention is that defendants were merely late to perform. Therefore, the court finds that there is no basis on which to invalidate the agreement.

B. Sanctions

Plaintiff requests that this court sanction defendants pursuant to LR IA 4-1 for their delay in complying with the terms of the agreement (#47, p. 1).

Local Rule IA 4-1 provides:

The court may, after notice and opportunity to be heard, impose any and all appropriate sanctions on an attorney or party appearing in *pro se* who, without just cause:

- (a) Fails to appear when required for pretrial conference, argument on motion, or trial;
- (b) Fails to prepare for a presentation to the court;
- (c) Fails to comply with these rules; or
- (d) Fails to comply with any order of this court.

LR IA 4-1.

Defendants do not provide any evidence to demonstrate that they diligently complied with the District Court's October 23, 2009, order. Their "action" in compliance with the settlement agreement is more aptly characterized as a "reaction" to the opposing party's filing of a motion. The court finds it frustrating when, in situations such as these, a plaintiff must turn to the court and file a motion to spur an opposing party to perform its obligations. This court's recommendation was issued in January 15, 2009, and the District Court adopted that recommendation. On October 23, 2009, it ordered that defendants deposit funds to plaintiff's Trust 2 account. Notwithstanding any confusion over the number of documents to be provided, defendants could have promptly delivered the funds to plaintiff. Instead, defendants deposited funds on December 4, 2009, six weeks after the issuance of the order and four days after plaintiff filed the instant motion. *See* #52, Ex. A. The court understands that defendants face particular hurdles in coordinating action amongst particular state government entities, but their failure to act within a reasonable time imposes burdens not only on

1 plaintiff but also the court.

2 The court notes that it would be within its discretion to sanction defendants; however, the
3 court ultimately determines that defendants' conduct, in this particular instance, should not be met
4 with sanctions. Once apprised of the need to act, it appears that defendants moved expeditiously to
5 perform the obligations under the settlement agreement and provided plaintiff with all benefits from
6 the agreement. Moreover, defendants appeared to err on the side of caution and provided plaintiff
7 with the full benefit of forty-eight dollars and eight cents (\$48.08) in his Trust 2 account as well as
8 all one hundred twenty-nine (129) pages of documents.

9 Therefore, plaintiff request for sanctions is denied.

10 III. CONCLUSION

11 The court finds that defendants have complied with all obligations under the agreement and
12 that any delay in performance is not worthy of sanction. Therefore, the District Court should enter
13 an order denying plaintiff's motion (#47), dismissing the case with prejudice, and directing the clerk
14 of court to close this file.

15 IV. RECOMMENDATION

16 The court respectfully recommends that plaintiff's motion for order invalidating settlement
17 agreement and motion for sanctions (#47) be **DENIED**; that the case be **DISMISSED** with
18 prejudice; and that the District Court direct the Clerk of Court to **CLOSE** this action and terminate
19 it in its entirety.

20 The parties are advised:

21 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice,
22 the parties may file specific written objections to this report and recommendation within fourteen
23 days of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and
24 Recommendation" and should be accompanied by points and authorities for consideration by the
25 District Court.

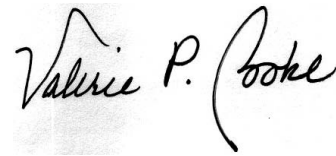
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1 2. This report and recommendation is not an appealable order and any notice of appeal
2 pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's judgment.

3 **DATED:** June 11, 2010.

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5 _____
6 **UNITED STATES MAGISTRATE JUDGE**